



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF489

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Commercial Fireworks Displays in the Monterey Bay National Marine Sanctuary

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the Monterey Bay National Marine Sanctuary (MBNMS), for the take of marine mammals incidental to commercial fireworks displays in the Monterey Bay National Marine Sanctuary (Sanctuary), California.

DATES: Effective from June 29, 2017 to June 28, 2022.

ADDRESSES: The LOA and supporting documents may be obtained online at:

www.nmfs.noaa.gov/pr/permits/incidental/research.htm. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Laura McCue, Office of Protected Resources, NMFS, 301-427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

NMFS has defined “unmitigable adverse impact” in 50 CFR 216.103 as an impact resulting from the specified activity:

- 1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and
- 2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Regulations governing the taking of harbor seals (*Phoca vitulina richardii*) and California sea lions (*Eumatopias jubatus*), by Level B harassment, incidental to MBNMS's commercial fireworks displays, were issued on June 14, 2017 (82 FR 27434) and remain in effect until June 28, 2022. A correction to the effective dates of the final rule was published on June 27, 2017 (82 FR 29010). For detailed information on the action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during commercial fireworks displays within the Sanctuary.

Summary of Request

On October 18, 2016, NMFS received an adequate and complete request for regulations and subsequent LOA from MBNMS for the taking of small numbers of marine mammals incidental to commercial fireworks displays within the Sanctuary. NMFS has issued incidental take authorizations under section 101(a)(5)(A or D) of the MMPA to MBNMS for the specified activity since 2005. NMFS first issued an incidental harassment authorization (IHA) under section 101(a)(5)(D) of the MMPA to MBNMS on July 4, 2005 (70 FR 39235; July 7, 2005), and subsequently issued 5-year regulations governing the annual issuance of LOAs under section 101(a)(5)(A) of the MMPA (71 FR 40928; July 19, 2006). Upon expiration of those regulations,

NMFS issued MBNMS an IHA (76 FR 29196; May 20, 2011), and subsequent 5-year regulations and LOA, which expire on June 28, 2017 (77 FR 31537; May 29, 2012).

Professional pyrotechnic devices used in fireworks displays can be grouped into three general categories: aerial shells (paper and cardboard spheres or cylinders ranging from 2-12 inch (in) (5-30 centimeter (cm)) in diameter and filled with incendiary materials), low-level comet and multi-shot devices similar to over-the-counter fireworks (*e.g.*, roman candles), and ground-mounted set piece displays that are mostly static in nature. Each display is unique according to the type and number of shells, the pace of the show, the length of the show, the acoustic qualities of the display site, and even the weather and time of day. An average large display will last 20 minutes and include 700 aerial shells and 750 low-level effects. An average smaller display lasts approximately seven minutes and includes 300 aerial shells and 550 low-level effects. The MBNMS anticipates permitting up to 10 fireworks events annually. Commercial fireworks displays produce noise that may result in Level B harassment of harbor seals and California sea lions that are hauled out near the fireworks displays. A maximum of 570 harbor seals and 3,983 California sea lions annually could be taken by Level B harassment with 2,850 harbor seals and 19,915 California sea lions taken over the 5-year effective period of the regulations. The authorized take will remain within the annual estimates analyzed in the final rule making.

Authorization

We have issued an LOA to MBNMS authorizing the take of marine mammals incidental to commercial fireworks displays, as described above. Take of marine mammals will be minimized through implementation of mitigation measures designed to reduce impacts on pinnipeds by establishing a sanctuary-wide seasonal prohibition to safeguard pinniped

reproductive periods by prohibiting displays between March 1 and June 30 of any year when the primary reproductive season for pinnipeds occurs; establishing four conditional display areas and prohibit displays along the remaining 95 percent of sanctuary coastal areas; limiting displays to an average frequency equal to or less than one every 2 months in each area with a total maximum of 10 displays per year across all four areas; limiting fireworks displays to not exceed 30 minutes, with the exception of two longer displays per year across all four areas that will not exceed 1 hour; implementing a ramp-up period, wherein salutes are not allowed in the first five minutes of the display; and conducting post-show debris cleanups for up to two days whereby all debris from the event is removed). Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The MBNMS will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: June 29, 2017.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.